IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1592 of 1991

For Approval and Signature:

HONOURABLE MR. JUSTICE B.J.SHETHNA
HONOURABLE MR.JUSTICE H.B.ANTANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NEW INDIA ASSURANCE CO.LTD. - Appellant(s)
Versus
SHANTILAL RAVJIBHAI PATEL & 2 - Defendant(s)

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Appearance :
MR RAJNI H MEHTA for Appellant(s) : 1,
MR JITENDRA M PATEL for Defendant(s) : 1 - 2.
NOTICE SERVED for Defendant(s) : 3,

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CORAM : HONOURABLE MR. JUSTICE B.J.SHETHNA

and

HONOURABLE MR.JUSTICE H.B.ANTANI

Date : 17/11/2006

ORAL JUDGMENT

(Per : HONOURABLE MR. JUSTICE B.J.SHETHNA)

The appellant-New India Assurance Company Limited (for short “Company”) has challenged in this appeal the impugned judgment and award dated 30.9.1991 passed by M.A.C. Tribunal (Aux.), Vadodara in M.A.C. Petition No.712 of 1985 whereby the learned Tribunal partly allowed the claim petition of the claimants and awarded in all Rs.89,000/- with interest @12% p.a. from the date of application till realisation with proportionate costs.

Claimants are parents of their only son Kaushikkumar, aged 22 years, died in a vehicular accident, which took place on 5.7.1985 at 12.00 mid night while walking on the road at Padra. They claimed Rs.1,50,000/= by way of compensation, but the learned Tribunal awarded only Rs.89,000/- from the owner as well as Insurance Company. The owner has not challenged the said award, but the Insurance Company is in appeal.

Only contention raised in this appeal by learned counsel Shri Rajni Mehta for the appellant-Insurance Company was that in this case, there was a fraud played by their agent, Shri Dinubhai Trivedi as well as owner of the vehicle. This very contention was raised before the learned Tribunal, which in our considered opinion, was rightly rejected by the learned Tribunal.

In the instant case, cover note Ex.27 was produced by the owner. Against that Insurance Company has produced another cover note Ex.53 which was admittedly not the carbon copy of the cover note Ex.27, which was produced by the owner of the vehicle. Manager, Manharlal Ramanlal Ex.50 has clearly stated in his evidence that the agent of the company used to prepare cover note in four copies, 1 original + 3 carbon copies. The Insurance Company has tried to project Ex.53 as original cover note, which is to be outright rejected, as it was not the carbon copy of original cover note Ex.27. It is to be noted that though the appellant-Insurance company pleaded both before this court as well as the Tribunal that there was fraud played against the company by the owner as well as their agent Dinubhai Trivedi, they have not bothered to examine Dunubhai.

Under the circumstances, in our considered opinion, the learned Tribunal has rightly partly allowed the claim petition and held both the Insurance Company as well as owner of the vehicle jointly and severally liable to pay Rs,.89,000/- to the claimants with interest @12% p.a.

Except the aforesaid submission, no other contention was raised by learned counsel for the appellant.

In view of the above discussion, this appeal fails and is hereby dismissed with costs. Interim

relief granted earlier on Civil Application stands vacated forthwith. Now the Tribunal shall pay the amount to the claimants, as per the award passed by the learned Tribunal, by way of A/c. Payee cheque.

(B.J.SHETHNA, J.)

(H.B.ANTANI, J.)

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